**PUBLIC BANK BHD.**

**v.**

**ABDULLAH ISMAIL & OTHER CASES**

HIGH COURT MALAYA, KOTA BHARU
ABDUL MALEK J
[CIVIL APPEAL NO. 4 OF 1985, NO. 12-1-86 & NO. 12-2-86]
31 MAY 1986

***CIVIL PROCEDURE:*** *Interest on jugment debt - Distinction between "prejudgment period" and "post-judgment period" - Civil Law Act 1956 - Section 11 - Discretion of Court - Rate of interest for post-judgment period - Whether can exceed 8 per centum per annum.*

The learned Judge dealt with all the three civil appeals together as the same principle relating to the award of interest applied. In all the three appeals, the appellants were dissatisfied with the decision of the learned President of the Sessions Court who had only allowed the interest prayed up to the date of judgment and had ordered that interest thereafter should be at the rate of 8 per centum per annum from date of judgment up to the date of realisation.

**Held:**

**[1]** The law seems to have made a distinction for the period between the date when the cause of action arose and the date of the judgment (the "pre-judgment period") and the period from the date of judgment until the judgment is satisfied (the "postjudgment period").

**[2]** For the pre-judgment period, s. 11 of the Civil Law Act 1956 gives the discretion to the Court to order interest in any proceedings for the recovery of any debt or damages, at such rate as it thinks fit, for the whole or part of that period but apart from it being merely a discretion, that section also prescribes three situations where it does not apply namely where it authorises the giving of interest upon interest, where the interest in relation to a debt is of right whether by virtue of an agreement or otherwise and where it affects the damages recoverable for the dishonour of a bill of exchange. As in these three appeals, the rate of interest had actually been agreed to between the parties, the discretion of the Court therefore did not arise. Consequently the rate of interest for the prejudgment period would be the agreed rate.

**[3]** The rate of interest for the postjudgment period is governed by O. 29 r. 12 of the Subordinate Court Rules 1980 and O. 42 r. 12 of the Rules of the High Court 1980. Both state that every judgment debt shall carry interest at the rate of 8 per centum per annum, or such other rate not exceeding that rate as the Court may direct, to be calculated for the postjudgment period. Therefore, unless the Court directs some other rate not exceeding 8 per centum per annum, the rate of interest for the postjudgment period must be 8 per centum per annum and nothing else.

**[4]** The learned President of the Sessions Court had made his decision on the correct principles. The three appeals were dismissed. But as the purpose of these appeals was to get a ruling of the Court on this matter, no order was made as to costs.

**Legislation referred to:**
Civil Law Act 1956, s. 11
Subordinate Courts Rules 1980, O. 28 r. 18, O. 29 r. 12, O. 42 r. 12

**Other sources referred to:**
*The Law on Interest,* K.S. Dass
*Mallal's Supreme Court Practice 496-497*
*Mallal's Digest Rules of the Supreme Court 534*

*For the appellant (in Appeal 4/85) - Wrigglesworth; M/s. Wrigglesworth & Co.*
*For the appellants (in Appeals 12-1-86 & 12-2-86) - Mokhtar Mohamed; M/s. Mokhtar & Co.*
*For the respondent (in Appeal 4/85) - Not served*
*For the respondent (in Appeal 12-1-86) - In person*
*For the respondent (in Appeal 12-2-86) - Absent*

**JUDGMENT**

**Abdul Malek J:**

I propose to deal with all the three civil appeals together as the same principle relating to the award of interest applies. In all the three appeals, the appellants were dissatisfied with the decision of the learned President of the Sessions Court who had only allowed the interest prayed up to the date of judgment and had ordered that interest thereafter should be at the rate of 8 per centum per annum from the date of judgment up to the date of realisation.

None of the authorities cited by learned Counsel for the plaintiff in Civil Appeal 4/85 is of any real assistance on this very point but the law seems to have made a distinction for the period between the date when the cause of action arose and the date of the judgment ("the prejudgment period") and the period from the date of judgment until the judgment is satisfied ("the postjudgment period").

For the prejudgment period, s. 11 of the Civil Law Act 1956 ("the Act") gives the discretion to the Court to order interest in any proceedings for the recovery of any debt or damages, at such rate as it thinks fit, for the whole or part of that period but apart from it being merely a discretion, that section also prescribes three situations where it does not apply namely where it authorises the giving of interest upon interest, where the interest in relation to a debt is of right whether by virtue of an agreement or otherwise and where it affects the damages recoverable for the dishonour of a bill of exchange. This same provision in repeated in O. 28 r. 18 of the Subordinate Courts Rules 1980 except that there the rate is specified at a maximum of 8 per centum per annum. In these three appeals, the rate of interest had actually been agreed to between the parties and the discretion of the Court therefore does not arise. Consequently the rate of interest for the prejudgment period would be the agreed rate. This is also consistent with the fact that if the Court were to award interest in addition to the agreed rate, it would conflict with the prohibition that no interest should be awarded upon interest.

It is clear that that situation can only arise in the prejudgment period but what is the position in the post-judgment period? O. 29 r. 12 of the Subordinate Courts Rules 1980 and O. 42 r. 12 of the Rules of the High Court 1980 both state that every judgment debt shall carry interest at the rate of 8 per centum per annum, or such other rate not exceeding that rate as the Court may direct, to be calculated for the post-judgment period and I am of the view that unless the Court directs some other rate not exceeding 8 per centum per annum, the rate of interest for the post-judgment period must be 8 per centum per annum and nothing else.

In the circumstances, I would hold that the Court has a discretion to award interest for the prejudgment period unless, as in these three appeals, one of the three conditions stated in the proviso to s. 11 of the Act applies (in these three cases the rate would be the rate agreed between the parties) and that, unless it directs that interest should be at a rate not exceeding 8 per centum per annum for the postjudgment period, the rate of interest for the post-judgment period shall be 8 per centum per annum. For the reasons stated, I am of the view that the learned President of the Sessions Court had made his decision on the correct principles and would dismiss the three appeals but as Counsel for the plaintiff in Civil Appeal 4/85 had pointed out that the purpose of these appeals was to get a ruling of the Court on this matter, I would make no order as to costs.

Also found at [1987] 1 CLJ 65